IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 32619 of 2005(G)

OS.246/1998 of II ADDL.SUB COURT,THRISSUR

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PETITIONERs:

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1. MAGI, AGED 61 YEARS,
   W/O. LATE THOMAS, MELADATH HOUSE,PARAVATTAM DESOM,
   OLLUKKARA VILLAGE, THRISSUR TALUK.

2. REJI, AGED 35 YEARS,
   S/O. LATE THOMAS, MELADATH HOUSE,PARAVATTAM DESOM,
   OLLUKKARA VILLAGE, THRISSUR TALUK

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.SANTHOSH (PODUVAL)

RESPONDENTS:

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1. M/S. RIGHT LEASING AND
   HIRE PURCHASE COMPANY (P) LTD., COLLEGE ROAD,
   THRISSUR.

2. SAJI TOM, S/O. LATE THOMAS,
   MELADATH HOUSE, PARAVATTAM DESOM,OLLUKKARA VILLAGE
   THRISSUR TALUK.

3. MINI, D/O. LATE MELEDATH THOMAS,
   MELEDATH HOUSE, PARAVATTAM DESOM,OLLUKKARA VILLAGE
   THRISSUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C)No.32619 OF 2005

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DATED THIS THE 5TH JUNE, 2007

J U D G M E N T

This Writ Petition has been posted as defective since respondent No.3 has not been served with notice.

2. The order of the execution court directing sale of the property belonging to the petitioners is under challenge in this proceeding under Article 227 of the Constitution initiated by the petitioners (judgment-debtors 2 and 3). Respondent Nos.2 and 3 were fellow-judgment-debtors who did not have any interest in the property. The issue is between the petitioners and the 1st respondent alone. The 1st respondent has already been served with notice.

3. The learned counsel for the petitioners is not able to inform me whether the petitioners have complied with the condition imposed by this Court on 23.11.2005 that a sum of Rs.35,000/- should be paid to the 1st respondent, within one month of 23.11.2005, towards the decree-debt.

4. Two contentions are seen raised in this Writ Petition. The first contention is that an application for setting aside the ex parte decree is already filed before the trial court, and the execution court should have deferred execution proceedings till final decision is taken

by the trial court on that application. The other contention is that there has been gross undervaluation in the matter of the proclamation which is now settled for sale. A portion of the property will be sufficient for discharging the entire decree-debt. Noticing both those contentions, the Writ Petition will stand disposed of issuing the following directions:-

1) If the petitioners have complied with the condition imposed by this Court for granting stay by paying Rs.35,000/- to the 1st respondent on or before 23.12.2005, the order of stay presently passed will continue for another four months. The court below will ensure that the remittance as ordered by this Court has been made by the petitioner.

2. If the trial court has not so far disposed of I.A.Nos.4798 and 4799 of 2005, that court will dispose of those I.As. in accordance with law within three months of receiving copy of this judgment.

It is open to the petitioners to identify a purchaser for a portion of their properties in the meanwhile. Once the petitioners identify such a purchaser, the purchaser will be taken to the 1st respondent and the 1st

respondent's concurrence will be obtained in the matter of sale of that portion. Once that is done, necessary application will be filed before the court below seeking permission for sale of that portion of the property. The court below will allow that application and ensure that the amounts necessary for liquidating the decree-debt is paid by the prospective purchaser directly to the 1st respondent. At any rate, it is clarified that the order of stay presently passed will not continue for more than four months. If the issue is not settled between the parties within four months, the court below will continue with the proceedings for sale of the properties for the balance amount due under the decree after adjusting all the amounts so far paid by the petitioners.

No costs.

(PIUS C. KURIAKOSE, JUDGE)

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